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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 19-7-2002.

BILL NO. 53 OF 2002

A Bill to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(*2*) It extends to the whole of India.

(*3*) It shall be deemed to have come into force on the 21st day of June, 2002.

2. (*1*) In this Act, unless the context otherwise requires,—

(*a*) "Appellate Tribunal" means a Debts Recovery Appellate Tribunal established under sub-section (*1*) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; 51 of 1993

(*b*) "asset reconstruction" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance;

(*c*) "bank" means—

(*i*) a banking company; or

(*ii*) a corresponding new bank; or

(*iii*) the State Bank of India; or

(*iv*) a subsidiary bank; or

(*v*) such other bank which the Central Government may, by notification, specify for the purposes of this Act;

(*d*) "banking company" shall have the meaning assigned to it in clause (*c*) of section 5 of the Banking Regulation Act, 1949; 10 of 1949

(*e*) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992; 15 of 1992.

(*f*) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

(*g*) "Central Registry" means the registry set up or cause to be set up under sub-section (*1*) of section 20;

(*h*) "corresponding new bank" shall have the meaning assigned to it in clause (*da*) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.

(*i*) "Debts Recovery Tribunal" means the Tribunal established under sub-section (*1*) of section 3 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993; 51 of 1993.

(*j*) "default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor in accordance with the directions or guidelines issued by the Reserve Bank;

(*k*) "financial assistance" means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution;

(*l*) "financial asset" means debt or receivables and includes—

(*i*) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(*ii*) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(*iii*) a mortgage, charge, hypothecation or pledge of movable property; or

(*iv*) any right or interest in the security, whether full or part underlying such debt or receivables; or

(*v*) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(*vi*) any financial assistance;

(*m*) "financial institution" means—

(*i*) a public financial institution within the meaning of section 4A of the 1 of 1956. Companies Act, 1956;

(*ii*) any institution specified by the Central Government under sub-clause (*ii*) of clause (*h*) of section 2 of the Recovery of Debts Due to Banks and 51 of 1993 Financial Institutions Act, 1993;

(*iii*) the International Finance Corporation established under the 42 of 1958. International Finance Corporation (Status, Immunities and Privileges) Act, 1958;

(*iv*) any other institution or non-banking financial company as defined in 2 of 1934. clause (*f*) of section 45-I of the Reserve Bank of India Act, 1934, which the Central Government may, by notification, specify as financial institution for the purposes of this Act;

(*n*) "hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property;

(*o*) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to assets classifications issued by the Reserve Bank;

(*p*) "notification" means a notification published in the Official Gazette;

(*q*) "obligor" means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;

(*r*) "originator" means the owner of a financial asset which is acquired by a securitisation company or reconstruction company for the purpose of securitisation or asset reconstruction;

(*s*) "prescribed" means prescribed by rules made under this Act;

(*t*) "property" means—

(*i*) immovable property;

(*ii*) movable property;

(*iii*) any debt or any right to receive payment of money, whether secured or unsecured;

(*iv*) receivables, whether existing or future;

(*v*) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;

(*u*) "qualified institutional buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or any other body corporate as may be specified by the Board; 15 of 1992.

(*v*) "reconstruction company" means a company formed and registered under the Companies Act, 1956 for the purpose of asset reconstruction; 1 of 1956.

(*w*) "Registrar of Companies" means the Registrar defined in clause (*40*) of section 2 of the Companies Act, 1956; 1 of 1956.

(*x*) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934; 2 of 1934.

(*y*) "scheme" means a scheme inviting subscription to security receipts proposed to be issued by a securitisation company or reconstruction company under that scheme;

(*z*) "securitisation" means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;

(*za*) "securitisation company" means any company formed and registered under the Companies Act, 1956 for the purpose of securitisation; 1 of 1956.

(*zb*) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;

(*zc*) "secured asset" means the property on which security interest is created;

(*zd*) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes—

(*i*) debenture trustee appointed by any bank or financial institution; or

(*ii*) securitisation company or reconstruction company; or

(*iii*) any other trustee holding securities on behalf of a bank or financial institution,

in whose favour security interest is created for due repayment by any borrower of any financial assistance;

(*ze*) "secured debt" means a debt which is secured by any security interest;

(*zf*) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;

(*zg*) "security receipt" means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;

(*zh*) "sponsor" means any person holding not less than ten per cent. of the paid-up equity capital of a securitisation company or reconstruction company;

(*zi*) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955; 23 of 1955.

(*zj*) "subsidiary bank" shall have the meaning assigned to it in clause (*k*) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959.

38 of 1959.

(*2*) Words and expressions used and not defined in this Act but defined in the Indian Contract Act, 1872 or the Transfer of Property Act, 1882 or the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 shall have the same meanings respectively assigned to them in those Acts.

9 of 1872.
4 of 1882.
1 of 1956.
15 of 1992.

CHAPTER II

REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

Registration of securitisation companies or reconstruction companies.

3. (*1*) No securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without—

(*a*) obtaining a certificate of registration granted under this section; and

(*b*) having the owned fund of not less than two crore rupees or such other amount not exceeding fifteen per cent. of total financial assets acquired or to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify:

Provided that the Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of securitisation companies or reconstruction companies:

Provided further that a securitisation company or reconstruction company, existing on the commencement of this Act, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.

(*2*) Every securitisation company or reconstruction company shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

(*3*) The Reserve Bank may, for the purpose of considering the application for registration of a securitisation company or reconstruction company to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:—

(*a*) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years;

(*b*) that such securitisation company or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;

(*c*) that the directors of securitisation company or reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction;

(*d*) that the board of directors of such securitisation company or reconstruction company does not consist of more than half of its total number of directors who are either nominees of any sponsor or associated in any manner with the sponsor or any of its subsidiaries;

(*e*) that any of its directors has not been convicted of any offence involving moral turpitude;

(*f*) that a sponsor, is not a holding company of the securitisation company or reconstruction company, as the case may be, or, does not otherwise hold any controlling interest in such securitisation company or reconstruction company;

(*g*) that securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.

(*4*) The Reserve Bank may, after being satisfied that the conditions specified in sub-section (*3*) are fulfilled, grant a certificate of registration to the securitisation company or the reconstruction company to commence or carry on business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

(*5*) The Reserve Bank may reject the application made under sub-section (*2*) if it is satisfied that the conditions specified in sub-section (*3*) are not fulfilled:

Provided that before rejecting the application, the applicant shall be given a reasonable opportunity of being heard.

(*6*) Every securitisation company or reconstruction company, shall obtain prior approval of the Reserve Bank for any substantial change in its management or change of location of its registered office or change in its name:

Provided that the decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final.

Explanation.—For the purposes of this section, the expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.

Cancellation of certificate of registration.

4. (*1*) The Reserve Bank may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company—

(*a*) ceases to carry on the business of securitisation or asset reconstruction; or

(*b*) ceases to receive or hold any investment from a qualified institutional buyer; or

(*c*) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or

(*d*) at any time fails to fulfil any of the conditions referred to in clauses (*a*) to (*g*) of sub-section (*3*) of section 3; or

(*e*) fails to—

(*i*) comply with any direction issued by the Reserve Bank under the provisions of this Act; or

(*ii*) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or

(*iii*) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or

(*iv*) obtain prior approval of the Reserve Bank required under sub-section (*6*) of section 3:

Provided that before cancelling a certificate of registration on the ground that the securitisation company or reconstruction company has failed to comply with the provisions of clause (*c*) or has failed to fulfil any of the conditions referred to in clause (*d*) or sub-clause (*iv*) of clause (*e*), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (*4*) of section 3 shall be prejudicial to the

public interest or the interests of the investors or the securitisation company or the reconstruction company, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

(*2*) A securitisation company or reconstruction company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government:

Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

(*3*) A securitisation company or reconstruction company, which is holding investments of qualified institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

Acquisition of rights or interest in financial assets

5. (*1*) Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution,—

(*a*) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(*b*) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(*2*) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (*1*) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(*3*) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (*1*) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be.

(*4*) If, on the date of acquisition of financial asset under sub-section (*1*), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (*1*) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted

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and enforced by or against the securitisation company or reconstruction company, as the case may be.

Notice to obligor and discharge of obligation of such obligor.

6. (*1*) The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority (including Registrar of Companies) in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

(*2*) Where a notice of acquisition of financial asset under sub-section (*1*) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

(*3*) Where no notice of acquisition of financial asset under sub-section (*1*) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitisation company or reconstruction company, as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

Issue of security by raising of receipts or funds by securitisation company or reconstruction company.

7. (*1*) Without prejudice to the provisions contained in the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, any securitisation company or reconstruction company, may, after acquisition of any financial asset under sub-section (*1*) of section 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts. 1 of 1956. 42 of 1956. 15 of 1992.

(*2*) A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

(*3*) In the event of non-realisation under sub-section (*2*) of financial assets, the qualified institutional buyers of a securitisation company or reconstruction company, holding security receipts of not less than seventy-five per cent. of the total value of the security receipts issued by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

(*4*) The qualified institutional buyers shall, at a meeting called under sub-section (*3*), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitisation company or reconstruction company, as the case may be.

Exemption from registration of security receipt.

8. Notwithstanding anything contained in sub-section (*1*) of section 17 of the Registration Act, 1908,— 16 of 1908.

(*a*) any security receipt issued by the securitisation company or reconstruction company, as the case may be, under sub-section (*1*) of section 7, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or

(*b*) any transfer of security receipts,

shall not require compulsory registration.

Measures for assets reconstruction.

9. Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:—

(*a*) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;

(*b*) the sale or lease of a part or whole of the business of the borrower;

(*c*) rescheduling of payment of debts payable by the borrower;

(*d*) enforcement of security interest in accordance with the provisions of this Act;

(*e*) settlement of dues payable by the borrower;

(*f*) taking possession of secured assets in accordance with the provisions of this Act.

Other functions of securitisation company or reconstruction company.

10. (*1*) Any securitisation company or reconstruction company registered under section 3 may—

(*a*) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;

(*b*) act as a manager referred to in clause (*c*) of sub-section (*4*) of section 13 on such fee as may be mutually agreed upon between the parties;

(*c*) act as receiver if appointed by any court or tribunal:

Provided that no securitisation company or reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability.

(*2*) Save as otherwise provided in sub-section (*1*), no securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (*4*) of section 3, shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction:

Provided that a securitisation company or reconstruction company which is carrying on, on or before the commencement of this Act, any business other than the business of securitisation or asset reconstruction or business referred to in sub-section (*1*), shall cease to carry on any such business within one year from the date of commencement of this Act.

Explanation— For the purposes of this section, "securitisation company" or "reconstruction company" does not include its subsidiary.

Resolution of disputes.

11. Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, or securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

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Power of Reserve Bank to determine policy and issue directions

12. (*1*) If the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any securitisation company or reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such securitisation company or reconstruction companay, it is necessary or expedient so to do, it may determine the policy and give directions to all or any securitisation company or reconstruction company in matters relating to income recognition, accounting standards, making provisions

for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the securitisation company or reconstruction company, as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

(2) Without prejudice to the generality of the power vested under sub-section (1), the Reserve Bank may give directions to any securitisation company or reconstruction company generally or to a class of securitisation companies or reconstruction companies or to any securitisation company or reconstruction company in particular as to—

(a) the type of financial asset of a bank or financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;

(b) the aggregate value of financial assets which may be acquired by any securitisation company or reconstruction company.

CHAPTER III

ENFORCEMENT OF SECURITY INTEREST

Enforcement of security interest.

13. (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act. 4

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(*7*) Where any action has been taken against a borrower under the provisions of sub-section (*4*), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(*8*) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

(*9*) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (*4*) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A
1 of 1956. of the Companies Act, 1956:

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-
1 of 1956. section (*1*) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of
1 of 1956. the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.—For the purposes of this sub-section,—

(*a*) "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;

(*b*) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(*11*) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses *(a)* to *(d)* of sub-section (*4*) in relation to the secured assets under this Act.

(*12*) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(*13*) No borrower shall, after receipt of notice referred to in sub-section (*2*), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.

14. (*1*) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(*a*) take possession of such asset and documents relating thereto; and

(*b*) forward such asset and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section *(1)*, the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Manner and effect of takeover of management.

15. *(1)* When the management of business of a borrower is taken over by a secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit—

(a) in a case in which the borrower is a company as defined in the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that Act; or 1 of 1956

(b) in any other case, to be the administrator of the business of the borrower.

(2) On publication of a notice under sub-section *(1)*,—

(a) in any case where the borrower is a company as defined in the Companies Act, 1956, all persons holding office as directors of the company and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section *(1)*, shall be deemed to have vacated their offices as such; 1 of 1956.

(b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section *(1)*, shall be deemed to be terminated;

(c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower

shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;

(d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

(3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,— 1 of 1956.

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

(c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

(4) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

No compensation to directors for loss of office

16. *(1)* Notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with the borrower.

(2) Nothing contained in sub-section *(1)* shall affect the right of any such managing director or any other director or manager of any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Right to appeal

17. *(1)* Any person (including borrower), aggrieved by any of the measures referred to in sub-section *(4)* of section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent. of the amount claimed in the notice referred to in sub-section *(2)* of section 13:

Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder. 51 of 1993

Appeal to Appellate Tribunal

18. *(1)* Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may

be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder. 51 of 1993.

Right of borrower to receive compensation and costs in certain cases.

19. If the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on an appeal filed under section 17 or section 18, holds the possession of secured assets by the secured creditor as wrongful and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or Appellate Tribunal.

CHAPTER IV

CENTRAL REGISTRY

Central Registry.

20. ***(1)*** **The Central Government may, by notification, set-up or cause to be set up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Act.**

(2) **The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section *(1)*, there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.**

(3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

(4) The provisions of this Act pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 1956, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988 and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws. 16 of 1908. 1 of 1956. 44 of 1958. 39 of 1970. 59 of 1988. 16 of 2000.

Central Registrar.

21. ***(1)*** **The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.**

(2) **The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Act as he may, from time to time, authorise them to discharge.**

Register of securitisation, reconstruction and security interest transactions.

22. *(1)* For the purposes of this Act, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to—

(a) securitisation of financial assets;

(b) reconstruction of financial assets; and

(c) creation of security interest.

(2) Notwithstanding anything contained in sub-section *(1)*, it shall be lawful for the Central Registrar to keep the records wholly or partly in computer, floppies, diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly in computer, floppies, diskettes or in any other electronic form, under sub-section *(2)*, any reference in this Act to entry in the Central Register shall be construed as a reference to any entry as maintained in computer or in any other electronic form.

(4) The register shall be kept under the control and management of the Central Registrar.

Filing of transactions of securitisation, reconstruction and creation of security interest.

23. The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed, within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be:

Provided that the Central Registrar may allow the filing of the particulars of such transaction or creation of security interest within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of such fee.

Modification of security interest registered under this Act.

24. Whenever the terms or conditions, or the extent or operation, of any security interest registered under this Chapter, are, or is, modified, it shall be the duty of the securitisation company or the reconstruction company or the secured creditor, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification of such security interest.

Securitisation company or reconstruction company or secured creditor to report satisfaction of security interest.

25. *(1)* The securitisation company or the reconstruction company or the secured creditor as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the securitisation company or the reconstruction company or the secured creditor and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.

(2) The Central Registrar shall, on receipt of such intimation, cause a notice to be sent to the securitisation company or reconstruction company or the secured creditor calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.

(3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

(4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

Right to inspect particulars of securitisation, reconstruction and security interest transactions.

26. *(1)* The particulars of securitisation or reconstruction or security interest entered in the Central Register of such transactions kept under section 22 shall be open during the business hours for inspection by any person on payment of such fee as may be prescribed.

(2) The Central Register referred to in sub-section *(1)* maintained in electronic form, shall also be open during the business hours for the inspection by any person through electronic media on payment of such fee as may be prescribed.

CHAPTER V

OFFENCES AND PENALTIES

Penalties.

27. If a default is made—

(a) in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditor; or

(b) in sending under section 24, the particulars of the modification referred to in that section; or

(c) in giving intimation under section 25,

every company and every officer of the company or the secured creditor and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Penalties for non-compliance of direction of Reserve Bank.

28. If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under section 12, such company and every officer of the company who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Offences.

29. If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Cognizance of offence.

30. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

CHAPTER VI

MISCELLANEOUS

Provisions of this Act not to apply in certain cases.

31. The provisions of this Act shall not apply to—

(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force; 9 of 1872. 3 of 1930.

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872; 9 of 1872.

(c) creation of any security in any aircraft as defined in clause *(1)* of section 2 of the Aircraft Act, 1934; 24 of 1934

(*d*) creation of security interest in any vessel as defined in clause *(55)* of section 3 of the Merchant Shipping Act, 1958; 44 of 1958

(*e*) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;

(*f*) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930; 3 of 1930

(*g*) any properties not liable to attachment or sale under the first proviso to sub-section (*1*) of section 60 of the Code of Civil Procedure, 1908; 5 of 1908

(*h*) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(*i*) any security interest created in agricultural land;

(*j*) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon.

Protection of action taken in good faith.

32. No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act.

Offences by companies

33. (*1*) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been

committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

Civil court not to have jurisdiction.

34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

51 of 1993.

The provisions of this Act to override other laws.

35. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law

Limitation.

36. No secured creditor shall be entitled to take all or any of the measures under sub-section (*4*) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

36 of 1963

Application of other laws not barred.

37. The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

1 of 1956.
42 of 1956.
15 of 1992.
51 of 1993.

Power of Central Government to make rules.

38. (*1*) The Central Government may, by notification and in the Electronic Gazette as defined in clause (*s*) of section 2 of the Information Technology Act, 2000, make rules for carrying out the provisions of this Act.

21 of 2000

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the form and manner in which an application may be filed under sub-section (*10*) of section 13;

(*b*) the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (*12*) of section 13;

(*c*) the safeguards subject to which the records may be kept under sub-section (*2*) of section 22;

(*d*) the manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;

(*e*) the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section (*1*) of section 26;

(*f*) the fee for inspecting the Central Register maintained in electronic form under sub-section (*2*) of section 26;

(*g*) any other matter which is required to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.

(*3*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if,

before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Certain provisions of this Act to apply after Central Registry is set up or cause to be set up.

39. The provisions of sub-sections (*2*), (*3*) and (*4*) of section 20 and sections 21, 22, 23, 24, 25, 26 and 27 shall apply after the Central Registry is set up or cause to be set up under sub-section (*1*) of section 20.

Power to remove difficulties.

40. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendments to certain enactments.

41. The enactments specified in the Schedule shall be amended in the manner specified therein.

Repeal and Saving

42. (*1*) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 is hereby repealed. Ord. 2 of 2002.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE
(*See* section 41)

Year	Act No.	Short title	Amendment
1956	1	The Companies Act, 1956.	In section 4A, in sub-section (*1*), after clause (*vi*), insert the following:— "(*vii*) the securitisation company or the reconstruction company which has obtained a certificate of registration under sub-section (*4*) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002".
1956	42	The Securities Contracts (Regulation) Act, 1956.	In section 2, in clause (*h*), after sub-clause (*ib*), insert the following:— "(*ic*) security receipt as defined in clause (*zg*) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.".
1986	1	The Sick Industrial Companies (Special Provisions) Act, 1985.	In section 15, in sub-section (*1*), after the proviso, insert the following:— Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (*1*) of section 5 of that Act: Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (*4*) of section 13 of that Act."

STATEMENT OF OBJECTS AND REASONS

The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices, there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, *inter alia,* have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.

2. It is now proposed to replace the Ordinance by a Bill, which, *inter alia,* contains provisions of the Ordinance to provide for—

(*a*) registration and regulation of securitisation companies or reconstruction companies by the Reserve Bank of India;

(*b*) facilitating securitisation of financial assets of banks and financial institutions with or without the benefit of underlying securities;

(*c*) facilitating easy transferability of financial assets by the securitisation company or reconstruction company to acquire financial assets of banks and financial institutions by issue of debentures or bonds or any other security in the nature of a debenture;

(*d*) empowering securitisation companies or reconstruction companies to raise funds by issue of security receipts to qualified institutional buyers;

(*e*) facilitating reconstruction of financial assets acquired by exercising powers of enforcement of securities or change of management or other powers which are proposed to be conferred on the banks and financial institutions;

(*f*) declaration of any securitisation company or reconstruction company registered with the Reserve Bank of India as a public financial institution for the purpose of section 4A of the Companies Act, 1956;

(*g*) defining 'security interest' as any type of security including mortgage and charge on immovable properties given for due repayment of any financial assistance given by any bank or financial institution;

(*h*) empowering banks and financial institutions to take possession of securities given for financial assistance and sell or lease the same or take over management in the

event of default, *i.e.* classification of the borrower's account as non-performing asset in accordance with the directions given or guidelines issued by the Reserve Bank of India from time to time;

(*i*) the rights of a secured creditor to be exercised by one or more of its officers authorised in this behalf in accordance with the rules made by the Central Government;

(*j*) an appeal against the action of any bank or financial institution to the concerned Debts Recovery Tribunal and a second appeal to the Appellate Debts Recovery Tribunal;

(*k*) setting up or causing to be set up a Central Registry by the Central Government for the purpose of registration of transactions relating to securitisation, asset reconstruction and creation of security interest;

(*l*) application of the proposed legislation initially to banks and financial institutions and empowerment of the Central Government to extend the application of the proposed legislation to non-banking financial companies and other entities;

(*m*) non-application of the proposed legislation to security interests in agricultural lands, loans not exceeding rupees one lakh and cases where eighty per cent. of the loans are repaid by the borrower.

2. The Bill seeks to achieve the above objects.

NEW DELHI; JASWANT SINGH.
The 9th July, 2002.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 1/1/2002-BO.I dated the 9th July, 2002 from Shri Jaswant Singh, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Bill, 2002 has recommended under article 117(1) of the Constitution the introduction of the Bill in Lok Sabha.

Notes on clauses

Clause 2.—This clause defines various expressions occurring in the Bill.

Clause 3.— This clause contains provisions relating to registration of securitisation companies or reconstruction companies.

Sub-clause (1) of this clause provides that no securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without obtaining a certificate of registration under the proposed legislation and having the owned fund of not less than two crore rupees or such other amount not exceeding fifteen per cent. of total financial assets to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify. However, the Reserve Bank has been empowered to specify different amounts of owned fund for different class or classes of securitisation companies or reconstruction companies.

The existing securitisation companies and reconstruction companies, have been allowed to carry on the business of securitisation or asset reconstruction if such companies make an application for registration to the Reserve Bank before the expiry of six months from the date of commencement of the proposed legislation until a certificate of registration is granted to it or its application for registration is rejected and such rejection is communicated to it.

Sub-clause (2) of this clause requires that every securitisation company or reconstruction company to make an application for registration to the Reserve Bank in such form and manner as it may specify.

Sub-clause (3) of this clause provides that the Reserve Bank may, for the purpose of considering the application for registration of a securitisation company or reconstruction company to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied by an inspection of records and books of such securitisation company or reconstruction company or otherwise that the conditions specified in this sub-clause are fulfilled.

Sub-clause (4) of this clause provides that the Reserve Bank may, after being satisfied that the conditions specified in sub-clause (*3*) are fulfilled grant a certificate of registration to the securitisation company or the reconstruction company to commence or carry on business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

Sub-clause (5) of this clause confers power upon the Reserve Bank to reject the application if it is satisfied that conditions specified in sub-clause (3) are not fulfilled. However before rejecting the application, the applicant shall be given a reasonable opportunity of being heard

Sub-clause (6) of this clause requires every securitisation company or reconstruction company to obtain prior approval of the Reserve Bank for any substantial change in its management (by way of transfer of shares or amalgamation or transfer of the business of such company) or change of location of its registered office or change in its name However, the decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final

Clause 4.—This clause contains provisions for cancellation of certificate of registration

Sub-clause (1) of this clause, *inter alia* confers power upon the Reserve Bank to cancel a certificate of registration granted to a securitisation company or a reconstruction company if such company ceases to carry on the business of securitisation or asset reconstruction or ceases to receive or hold any investment from a qualified institutional buyer or if such company has failed to comply with any conditions subject to which

the certificate of registration has been granted to it or at any time such company fails to fulfil any of the conditions referred to in items (a) to (g) of sub-clause (3) of clause 3 or fails to comply with any direction issued by the Reserve Bank under the provisions of proposed legislation; or maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of the proposed legislation; or submit or offer for inspection its books of account and other relevant documents when so demanded by the Reserve Bank; or obtain prior approval of the Reserve Bank required under sub-clause (6) of clause 3.

Sub-clause (2) of this clause allows a securitisation company or reconstruction company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration to prefer an appeal to the Central Government. The appeal may be preferred within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it.

Sub-clause (3) of this clause provides that securitisation company or reconstruction company, which is holding investments of qualified institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation of certificate of registration, be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

Clause 5.—This clause contains provisions relating to acquisition of rights or interest in financial assets. ..

Sub-clause (1) of this clause allows any securitisation company or reconstruction company, notwithstanding anything contained in any agreement or any other law for the time being in force, to acquire financial assets of any bank or financial institution, by issue of a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them. Such assets can also be acquired by entering into an agreement with such bank or financial institution for transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

Sub-clause (2) of this clause provides that if the bank or financial institution is a lender in relation to any financial assets acquired under sub-clause (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

Sub-clause (3) of this clause provides that all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-clause (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of financial assets, unless otherwise expressly provided in the proposed legislation, be of full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, the securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be

Sub-clause (4) of this clause provides that if, on the date of acquisition of financial asset under sub-clause (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution [save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985], the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

Clause 6.—This clause contains provisions for sending of notice to obligor and discharge of obligation of such obligor

Sub-clause (1) of this clause provides that the bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company to the concerned obligor and any other concerned person and to the concerned registering authority (including Registrar of Companies) in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

Sub-clause (2) of this clause provides that where a notice of acquisition of financial asset under sub-clause (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be. The payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

Sub-clause (3) of this clause provides that where no notice of acquisition of financial asset under sub-clause (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitisation company or reconstruction company, as the case may be. Such bank or financial institution shall hold such payment or property which shall forthwith be made over and delivered to such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

Clause 7.— This clause allows issue of security receipts or raising of funds by securitisation company or reconstruction company.

Sub-clause (1) of this clause provides that any securitisation company or reconstruction company, may, without prejudice to the provisions contained in the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, after acquisition of any financial asset under sub-clause (1) of clause 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts.

Sub-clause (2) of this clause provides that a securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and such securitisation company or reconstruction company shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial assets acquired out of investments made by the qualified institutional buyers. Such company shall ensure that realisations of such financial assets are held and applied towards redemption of investments and the returns assured on such investments under the relevant scheme.

Sub-clause (3) of this clause provides that in the event of non-realisation of financial assets, the qualified institutional buyers of a securitisation company or reconstruction

company holding security receipts of not less than seventy-five per cent. of the total value of the security receipts issued by such company, shall be entitled to call the meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

Sub-clause *(4)* of this clause provides that the qualified institutional buyers shall, at such meeting called, follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitisation company or reconstruction company, as the case may be.

Clause 8.—This clause provides for exemption from registration of security receipt.

This clause, *inter-alia,* provides that any security receipt issued by the securitisation company or reconstruction company, or any transfer of the security receipts, notwithstanding anything contained in sub-section *(1)* of section 17 of the Registration Act, 1908, shall not require compulsory registration.

Clause 9.—This clause provides for measures for assets reconstruction. It provides that a securitisation company or reconstruction company may, without prejudice to the provisions contained in any other law for the time being in force, for the purposes of asset reconstruction, and having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the measures, namely (a) the proper management of the business of the borrower, by change in, or take over of the management of the business of the borrower; (b) the sale or lease of a part or whole of the business of the borrower; (c) rescheduling of payment of debt payable by the borrower; (d) enforcement of security interests in accordance with the provisions of the proposed legislation; (e) settlement of dues payable by the borrower; (f) taking possession of secured assets in accordance with the provisions of the proposed legislation.

Clause 10.—This clause allows a securitisation company or reconstruction company to carry on other functions in addition to functions of securitisation or asset reconstruction.

Sub-clause *(1)* of this clause allows any securitisation company or reconstruction Company registered under clause 3 to act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties or act as a manager referred to in item (c) of sub-clause (4) of clause 13, on such fee as may be mutually agreed upon between the parties or act as receiver if appointed by any court or tribunal. However, a securitisation company or reconstruction company cannot act as a manager if acting as such gives rise to any pecuniary liability.

Sub-clause *(2)* of this clause provides that no securitisation company or reconstruction company registered under clause 3, shall, save as otherwise provided in sub-clause *(1)*, commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction. However an existing securitisation company or reconstruction company, which is already carrying on any business other than the business of securitisation or asset reconstruction or business referred to in sub-clause *(1)*, shall cease to carry on any such business within one year from the date of commencement of proposed legislation.

Clause 11.—This clause contains provisions for resolution of disputes.

This clause provides that where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely the bank or financial institution or securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

Clause 12.—This clause confers power upon the Reserve Bank to determine policy and issue directions.

Sub-clause (*1*) of this clause provides that if the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any securitisation company or reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such securitisation company or reconstruction company it is necessary or expedient so to do, it may determine the policy and give directions to all or any securitisation company or reconstruction company in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the securitisation company or reconstruction company, as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

Sub-clause (*2*) of this clause confers power upon the Reserve Bank to give directions to any securitisation company or reconstruction company generally or to a class of securitisation companies or reconstruction companies or to any securitisation company or reconstruction company on matters such as the type of financial assets of the bank or financial institution which can be acquired by it, the procedure for acquisition of such assets and valuation thereof and the aggregate value of financial assets which may be acquired by any securitisation company or reconstruction company. .

Clause 13.—This clause provides that any security interest created in favour of any secured creditor may, notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of the proposed legislation.

Sub-clause (*2*) of this clause provides that where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise any or all of the rights under sub-clause (*4*) of this clause.

Sub-clause (*3*) of this clause requires that such notice shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

Sub-clause (*4*) of this clause confers power upon the secured creditor to take recourse to one or more of certain measures to recover his secured debt in case the borrower fails to discharge his liability in full. Such measures may be to (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; (b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset; (c) appoint any person to manage the secured assets the possession of which has been taken over by the secured creditor; (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Sub-clause (*5*) of this clause provides that any payment made by any person referred to in item (*d*) of sub-clause (*4*) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

Sub-clause (*6*) of this clause provides that any transfer of secured asset after taking possession thereof or take over of management under sub-clause (4), by the secured creditor or by the manager on behalf of the secured creditors shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer has been made by the owner of such secured asset.

Sub-clause (*7*) of this clause provides that where any action has been taken against a borrower under the provisions of sub-clause (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expense incidental thereto, shall be recoverable from the borrower. It also provides that any money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, and shall be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

Sub-clause (*8*) of this clause provides that if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred, by the secured creditors and no further step shall be taken by him for transfer or sale of that secured asset.

Sub-clause (*9*) of this clause provides that in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-clause (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three fourth in value of the amount as on a record date and such action shall be binding on all the secured creditors. The expression "record date" has been defined in the *Explanation* to this sub-clause.

However in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956. In the case of a company being wound up on or after the commencement of the proposed legislation, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act,1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provision of section 529A of that Act. This clause further provides that the liquidator shall intimate to the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956. In case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator. In case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or shall be entitled to receive the excess amount, if any, deposited by him with the liquidator. The secured creditor shall also be required to furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Sub-clause (*10*) of this clause provides that where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in such form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

Sub-clause (*11*) of this clause provides that secured creditor shall, without prejudice to the rights conferred on the secured creditor under or by this clause, be

entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in items (*a*) to (*d*) of sub-clause (*4*) in relation to the secured assets under the proposed legislation.

Sub-clause (*12*) of this clause provides that the rights of a secured creditor under the proposed legislation may be exercised by one or more of his officers authorised in this behalf in such manner as may be specified by the rules made by the Central Government.

Sub-clause (*13*) of this clause provides that no borrower shall, after receipt of notice referred to in sub-clause (*2*), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Clause 14.— This clause contains provisions to enable the secured creditor to take the assistance of the Chief Metropolitan Magistrate or District Magistrate in taking possession of secured asset.

Sub-clause (*1*) of this clause provides that where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor in accordance with the provisions of the proposed legislation, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured assets or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him take possession of such assets and documents relating thereto and forward such assets and documents to the secured creditor.

Sub-clause (*2*) of this clause provides that the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary for the purpose of securing compliance with the provisions of sub-clause (*1*).

Sub-clause (*3*) of this clause provides that no act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this clause shall be called in question in any court or before any authority.

Clause 15.—This clause contains provisions relating to the manner and effect of take over of management of the business of the borrower.

Sub-clause (*1*) of this clause provides that when the management of business of a borrower is taken over by the secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit (a) to be the directors of the borrower in case the borrower is a company, in accordance with the provisions of the Companies Act, 1956, or (b) in any other case, to be the administrator of the business of the borrower.

Sub-clause (*2*) of this clause provides that on publication of a notice under sub-clause (1), where the borrower is a company all persons holding office as directors of the company and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice shall be deemed to have vacated their offices as such and any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice shall be deemed to be terminated. The directors or the administrators appointed under this clause shall take such steps as may be necessary to take into their custody or under their control all the property, effects

and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice; the directors appointed under this clause shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this clause, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

Sub-clause (*3*) of this clause provides that where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in that Act or in the memorandum or articles of association of such borrower company it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company. No resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor and no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

Sub-clause (*4*) of this clause provides that where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

Clause 16.—This clause contains provisions relating to the compensation to directors for loss of office.

Sub-clause *(1)* of this clause provides that no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall, notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, be entitled to any compensation for the loss of office or for the premature termination under the proposed legislation of any contract of management entered into by him with the borrower.

Sub-clause *(2)* of this clause provides that provisions contained in sub-clause (*1*) shall not affect the right of any such managing director or any other director or manager or any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Clause 17.—This clause contains provisions relating to appeal.

Sub-clause *(1)* of this clause provides that any person (including borrower) aggrieved by any of the measures referred to in sub-clause (*4*) of clause 13 taken by the secured creditor or his authorised officer under the proposed legislation, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

Sub-clause *(2)* of this clause provides that where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent. of the amount claimed in the notice referred to in sub-clause (*2*) of clause 13. However the Debts Recovery Tribunal has been conferred power to waive or reduce the amount to be deposited under this clause.

Sub-clause *(3)* of this clause provides that the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

Clause 18.—This clause contains provisions relating to the appeal to Appellate Tribunal.

Sub-clause *(1)* of this clause provides that any person aggrieved by any order made by the Debts Recovery Tribunal under clause 17 may prefer an appeal to the Appellate Tribunal within thirty days from the date of receipt of the order of the Debts Recovery Tribunal.

Sub-clause *(2)* of this clause provides that the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

Clause 19.—This clause contains provisions relating to the right of borrower to receive compensation and costs in certain cases.

If the Debts Recovery Tribunal or the Appellate Tribunal holds the possession of secured assets by the secured creditor as wrongful possession, and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or Appellate Tribunal.

Clause 20.—This clause contains provisions relating to the Central Registry.

Sub-clause *(1)* of this clause provides that the Central Government may by notification set-up or cause to be set-up from such date as it may specify in the notification a registry to be known as the Central Registry for the purpose of registration of transactions of securitisation and reconstruction of financial assets and creation of security interests the Central Registry shall have its own seal.

Sub-clause *(2)* of this clause provides that the head office of the Central Registry shall be at such place as the Central Government may specify and the Central Government may also establish branch offices of the Central Registry at such other places as it thinks fit.

Sub-clause *(3)* of this clause provides that the Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

Sub-clause *(4)* of this clause provides that the provisions of the proposed legislation pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 1956, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988 and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

Clause 21.—This clause contains provisions relating to the appointment of the Central Registrar.

Sub-clause *(1)* of this clause provides that the Central Government may, by notification, appoint a person to be known as the Central Registrar for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interests created over properties.

Sub-clause *(2)* of this clause provides that the Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under the proposed legislation as he may authorise them to discharge.

Clause 22.—This clause contains provisions for keeping of Register of securitisation, reconstruction and security interests.

Sub-clause *(1)* of this clause provides that a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to securitisation of financial assets, reconstruction of financial assets and creation of security interest.

Sub-clause (*2*) of this clause provides that it shall be lawful for the Central Registrar to keep the records wholly or partly in computer, floppies, diskettes or in any other electronic form subject to such safeguards as may be specified by rules made by the Central Government.

Sub-clause (*3*) of this clause provides that where such register is maintained wholly or partly in computer, floppies, diskettes or in any other electronic form, any reference in proposed legislation to entry in the Central Register shall be construed as a reference to any entry as maintained in computer or in any other electronic form.

Sub-clause (*4*) of this clause provides that the Central Register shall be kept under the control and management of the Central Registrar.

Clause 23.—This clause contains provisions for filing of transactions of securitisation, reconstruction and creation of security interest.

This clause provides that the particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be, with the Central Registrar in the manner and on payment of such fee as may be specified by rules made by the Central Government. The Central Registrar has been conferred upon power to allow the filing of the particulars of such transaction or creation of security within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of such fee.

Clause 24.—This clause contains provisions relating to the modification of security interest registered under the proposed legislation. This clause provides that whenever the terms or conditions, or the extent or operation of any security interest registered are or is modified, it shall be the duty of the securitisation company or the reconstruction company or the secured creditor, as the case may be, to send to the Central Registrar, the particulars of such modification and the provisions relating to registration of a security interest shall apply to such modification of such security interest.

Clause 25.—This clause contains provisions relating to reporting to the Central Registrar of satisfaction of the security interest by the securitisation company or reconstruction company or the secured creditor.

Sub-clause (*1*) of this clause provides that the securitisation company or reconstruction company or the secured creditor, as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the securitisation company or the reconstruction company or the secured creditors and requiring registration under the proposed legislation, within thirty days from the date of such payment or satisfaction.

Sub-clause (*2*) of this clause provides that the Central Registrar shall, on receipt of such intimation, cause a notice to be sent to the securitisation company or reconstruction company or the secured creditors calling upon it to show cause within a time not exceeding fourteen days specified in such notice as to why payment or satisfaction of security interest should not be recorded as intimated to the Central Registrar.

Sub-clause (*3*) of this clause provides that if no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

Sub-clause *(4)* of this clause provides that if cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

Clause 26.—This clause contains provisions relating to right to inspect particulars of securitisation, reconstruction and security interest transactions.

Sub-clause *(1)* of this clause provides that the particulars of securitisation or reconstruction or security interest entered in the Central Register of such transactions kept under clause 22 shall be open during the business hours for inspection by any person on payment of such fees as may be specified by rules made by the Central Government.

Sub-clause *(2)* of this clause provides that the Central Register maintained in electronic form shall also be open during the business hours for the inspection by any person through electronic media on payment of such fee as may be specified by rules made by the Central Government.

Clause 27.—This clause contains provisions relating to penalties. This clause provides that if a default is made (a) in filing under clause 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditor; or (b) in sending under clause 24, the particulars of the modification referred to in that clause; or (c) in giving intimation under clause 25 to the Central Registrar, every company and every officer of the company or the secured creditor and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Clause 28.—This clause contains provisions relating to penalties for non-compliance of direction of Reserve Bank. If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under clause 12, such company and every officer of the company who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Clause 29.—This clause contains provisions relating to offences. If any person contravenes or attempts to contravene or abets the contravention of provisions of the proposed legislation or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Clause 30.—This clause contains provisions relating to cognizance of offence. It provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under the proposed legislation.

Clause 31.—This clause specifies the cases to which the provisions of the proposed legislation shall not apply. It provides that the provisions of the proposed legislation shall not apply to (a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force; (b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872; (c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934; (d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958; (e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created; (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930; (g) any property not liable to attachment or sale under the first proviso to sub-section (1) of section 60 of the

Code of Civil Procedure,1908; (h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees; (i) any security interest created in agricultural land; (j) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon.

Clause 32.—This clause provides for protection of action taken in good faith. It provides that no suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under the proposed legislation.

Clause 33.—This clause contains provisions relating to offences by companies.

Sub-clause (1) of this clause provides that where an offence under the proposed legislation has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However such person shall not be liable to such punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Sub-clause (2) of this clause provides that where an offence under the proposed legislation has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Clause 34.—This clause provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the proposed legislation to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the proposed legislation or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Clause 35.—This clause provides that the provisions of the proposed legislation shall override other laws. It provides that the provisions of the proposed legislation shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Clause 36.—This clause contains provisions relating to limitation. It provides that no secured creditor shall be entitled to take any or all of the measures under sub-clause (4) of clause 13, unless his claim in respect of the financial asset is made within the period of limitation specified under the Limitation Act, 1963.

Clause 37.—This clause provides that the provisions of the proposed legislation or the rules made thereunder shall be in addition to, and not in derogation of the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

Clause 38.—This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. Every rule made under the proposed legislation shall be laid before each House of Parliament.

Clause 39.— This clause provides that provisions relating to appointment of Central Registrar, keeping of Central Register, filing of transactions of securitisation, reconstruction and creation of security interest, modification of security interest registered under the proposed legislation, to report satisfaction of security interest, inspection of particulars of securitisation, reconstruction and security interest transaction and penalties for default in filing the particulars of every transaction of any securitisation or asset reconstruction or security interest or sending particulars of modification therefor or giving intimation under clause 25 shall not apply until the Central Registry is established or cause to be established.

Clause 40.—*Sub-clause* (1) of this clause empowers the Central Government to issue orders as may be necessary for removing the difficulties in implementing the provisions of the proposed legislation. Such orders may be issued within a period of two years from the date of commencement of the proposed legislation. Sub-clause (2) of this clause provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 41.—This clause seeks to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Sick Industrial Companies (Special Provisions) Act, 1985 in the manner specified therein.

Clause 42.— This clause proposes to repeal the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002. It further proposes to save the things done or action taken under the said Ordinance.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 20 of the Bill proposes to set up or cause to be set up a registry to be known as Central Registry for the purpose of registration of transactions of securitisation, reconstruction of financial assets and creation of security interest. Sub-clause (2) of clause 20 provides for establishment of head office and branch offices of the Central Registry.

2. Sub-clause (1) of clause 21 proposes that the Central Government may, by notification in the Official Gazette, appoint a person for the purposes of registration of transactions relating to securitisation, reconstruction of financial assets and security interests created over properties, to be known as Central Registrar. Sub-clause (2) of the said clause empowers the Central Government to appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such of his functions as he may, from time to time, authorise them to discharge. It is estimated that the expenditure for setting up of the Central Registry and its branches will be approximately to the tune of two crore and fifty lakh rupees. The estimated expenditure for the payment of salary to the Registrar and such other officers and expenditure towards the rent of the premises, *i.e*, of the Central Registry would be to the tune of one crore and fifty lakh rupees per annum.

3. This Bill, if enacted, will not incur any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 38 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made relate, *inter alia*, to the form and manner in which an application may be filed under sub-section (10) of section 13; the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13; the safeguards subject to which the records may be kept under sub-section (2) of section 22; the manner in which the particulars of every transactions of securitisation shall be filed under section 23 and fee for filing such transaction; the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section (1) of section 26; the fee for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26; any other matter which is required to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.

2. The rules made by the Central Government shall be laid, as soon as may be after they are made, before each House of Parliament.

3. The matters in respect of which rules may be made are generally matters of procedures and administrative detail and it is not practicable to provide for them in the Bill. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 55 OF 2002

A Bill further to amend the Negotiable Instruments Act, 1881, *the Bankers' Books Evidence Act,* 1891 *and the Information Technology Act,* 2000.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

CHAPTER II

AMENDMENTS TO THE NEGOTIABLE INSTRUMENTS ACT, 1881

Substitution of new section for section 6.

26 of 1881.

2. For section 6 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

"Cheque".

'6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation I.—For the purposes of this section, the expression—

(*a*) "a cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;

(*b*) "a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II.—For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.'.

Amendment of section 64.

3. Section 64 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.".

Amendment of section 81

4. Section 81 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) Where the cheque is an electronic image of a truncated cheque, even after the payment the banker who received the payment shall be entitled to retain the truncated cheque.

(*3*) A certificate issued on the foot of the printout of the electronic image of a truncated cheque by the banker who paid the instrument, shall be *prima facie* proof of such payment.".

Amendment of section 89.

5. Section 89 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) Where the cheque is an electronic image of a truncated cheque, any difference in apparent tenor of such electronic image and the truncated cheque shall be a material alteration and it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of electronic image of the truncated cheque while truncating and transmitting the image.

(*3*) Any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same.".

Amendment of section 131.

6. In section 131 of the principal Act, *Explanation* shall be re-numbered as *Explanation* I thereof, and after *Explanation* I as so re-numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation* II.—It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the *prima facie* genuineness of the cheque to be truncated and any fraud, forgery or tampering

apparent on the face of the instrument that can be verified with due diligence and ordinary care.".

Amendment of section 138

7. In section 138 of the principal Act,—

(*a*) for the words "a term which may be extended to one year", the words "a term which may be extended to two years" shall be substituted;

(*b*) in the proviso, in clause (*b*), for the words "within fifteen days", the words "within thirty days" shall be substituted.

Amendment of section 141.

8. In section 141 of the principal Act, in sub-section (*1*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.".

Amendment of section 142.

9. In section 142 of the principal Act, after clause (*b*), the following proviso shall be inserted, namely:—

"Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.".

Insertion of new sections after section 142.

10. After section 142 of the principal Act, the following sections shall be inserted, namely:—

Power of Court to try cases summarily.

"143. (*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

2 of 1974.

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(*2*) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(*3*) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

Mode of service of summons.

144. (*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works

for gain, by speed post or by such courier services as are approved by a Court of Session.

(*2*) Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

Evidence on affidavit.

145. (*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code. 2 of 1974.

(*2*) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

Bank's slip *prima facie* evidence of certain facts.

146. The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

Offences to be compoundable.

147. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be compoundable. 2 of 1974.

CHAPTER III

AMENDMENT TO THE BANKERS' BOOKS EVIDENCE ACT, 1891

Amendment of section 2.

11. In section 2 of the Bankers' Books Evidence Act, 1891,— 18 of 1891.

(*a*) for clause (*3*), the following clause shall be substituted, namely:—

'(*3*) "bankers' books" include ledgers, day-books, cash-books, account-books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both'." '

(*b*) in clause (*8*), after sub-clause (*b*), the following sub-clause shall be inserted, namely:—

"(*c*) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of section 2A.".

CHAPTER IV

AMENDMENTS TO THE INFORMATION TECHNOLOGY ACT, 2000

Amendment of section 1

12. In the Information Technology Act, 2000 (hereinafter referred to as the principal Act), in section 1, in sub-section (*4*), for clause (*a*), the following clause shall be substituted, namely:— 21 of 2000.

"(*a*) a negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881;". 26 of 1881.

Insertion of new section 81A

13. After section 81 of the principal Act, the following section shall be inserted, namely:—

Application of the Act to electronic cheque and truncated cheque

'81A. (*1*) The provisions of this Act, for the time being in force, shall apply to, or in relation to, electronic cheques and the truncated cheques subject to such modifications and amendments as may be necessary for carrying out the purposes of the Negotiable Instruments Act, 1881 by the Central Government, in consultation with the Reserve Bank of India, by notification in the Official Gazette.

26 of 1881

(*2*) Every notification made by the Central Government under sub-section (*1*) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Explanation —For the purposes of this Act, the expressions "electronic cheque" and "truncated cheque" shall have the same meaning as assigned to them in section 6 of the Negotiable Instruments Act, 1881.'.

26 of 1881

STATEMENT OF OBJECTS AND REASONS

The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act,1881, namely, sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.

2. A large number of cases are reported to be pending under sections 138 to 142 of the Negotiable Instruments Act in various courts in the country. Keeping in view the large number of complaints under the said Act pending in various courts, a Working Group was constituted to reveiw section 138 of the Negotiable Instruments Act, 1881 and make recommendations as to what changes were needed to effectively achieve the purpose of that section.

3. The recommendations of the Working Group along with other representations from various institutions and organisations were examined by the Government in consultation with the Reserve Bank of India and other legal experts, and a Bill, namely, the Negotiable Instruments (Amendment) Bill, 2001 was introduced in the Lok Sabha on 24th July, 2001. The Bill was referred to Standing Committee on Finance which made certain recommendations in its report submitted to Lok Sabha in November, 2001.

4. Keeping in view the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, *inter alia*, the following amendments in the Negotiable Instruments Act,1881, namely:—

(i) to increase the punishment as prescribed under the Act from one year to two years;

(ii) to increase the period for issue of notice by the payee to the drawer from 15 days to 30 days;

(iii) to provide discretion to the Court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act;

(iv) to prescribe procedure for dispensing with preliminary evidence of the complainant;

(v) to prescribe procedure for servicing of summons to the accused or witness by the Court through speed post or empanelled private couriers;

(vi) to provide for summary trial of the cases under the Act with a view to speeding up disposal of cases;

(vii) to make the offences under the Act compoundable;

(viii) to exempt those directors from prosecution under section 141 of the Act who are nominated as directors of a company by virtue of their holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government, or the State Government, as the case may be;

(ix) to provide that the Magistrate trying an offence shall have power to pass sentence of imprisonment for a term exceeding one year and amount of fine exceeding five thousand rupees;

(x) to make the Information Technology Act, 2000 applicable to the Negotiable Instruments Act,1881 in relation to electronic cheques and truncated cheques subject to such modifications and amendments as the Central Government, in consultation with the Reserve Bank of India, considers necessary for carrying out the purposes of the Act, by notification in the Official Gazette; and

(xi) to amend definitions of "bankers' books" and "certified copy" given in the Bankers' Books Evidence Act,1891.

5. The proposed amendments in the Act are aimed at early disposal of cases relating to dishonour of cheques, enhancing punishment for offenders, introducing electronic image of a truncated cheque and a cheque in the electronic form as well as exempting an official nominee director from prosecution under the Negotiable Instruments Act,1881.

6. The Bill seeks to achieve the above objects.

NEW DELHI;
The 9th July, 2002.

JASWANT SINGH.

G. C. MALHOTRA,
Secretary-General

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